IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7320 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

F D RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7320 of 1990

MR PM THAKKAR for Petitioner No. 1

MR MANGESH MENGADE ASSTT GOVT PLEADER for Respondent No. 1-2

NOTICE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 01/12/2003

ORAL JUDGEMENT

Heard learned advocate Mrs.Sangeeta Pahwa appearing on behalf of the petitioner and learned AGP

Mr.Mengade for the respondents.

#. In the present petition, the petitioner has challenged the order passed by the respondent No.2 which is at Annexure-H dated 19th March, 1990 and also the order dated 15th September, 1990 - Annexure-I passed by the respondent No.1, so also, the order dated 24th January, 1991 - Annexure-J to the petition. Initially, this Court has issued Notice, returnable on 16th February, 1991 and meanwhile, operation of the impugned order - Annexure-J is stayed by this Court by order dated 7th February, 1991. Thereafter, the matter adjourned on various occasions for one or the other reasons and ultimately, Rule has been issued by this Court on 20th April, 1991 returnable on 17thJune, 1991 and in the mean time, interim relief granted in terms of Para-40[C], which is prayed for in the following terms :

"Your Lordship be pleased to stay further operation, implementation and execution of the impugned order of reversion at Annexure-H to the petition dated 19th March, 1990 passed by the respondent No.2 and the order at Annexure-I to the petition dated 19th September, 1990 passed by the respondent No.1 and be further pleased to direct the respondents to permit the petitioner to discharge his duties as PSI under the respondent No.3 and to draw his salaries regularly pending admission, hearing and final disposal of this petition.

#. At this stage, it is pertinent to note that the respondent authority has amended the order of punishment dated 19th March, 1990 by order dated 24th January, 1991 which is at Annexure-J whereby the petitioner was reverted from the post of PSI to Head Constable in maximum pay scale of Head Constable Post for the period of two years and accordingly, the petitioner was reverted from the post of PSI to First Grade Head Constable for a period of two years. The respondent authority has thereafter deleted the word "maximum scale" in the salary of Head Constable and word "simple reversion" has been ordered to be incorporated. It requires to be noted that the said order - Annexure-J is also challenged by the petitioner in para-40[CC] which is as prayed for as under :

"Your Lordships be pleased to stay further operation, implementation and execution of the impugned order of reversion which is at Annexure-H dated 19th march, 1990 passed by the

respondent No.2 and the order which is at Annexure-I dated 19th September, 1990 passed by the respondent No.1 and the order at Annexure-J dated 24th January, 1991 and be pleased to direct the respondents to permit the petitioner to discharge his duties as PSI under the respondent No.3 and to draw his salaries accordingly pending final disposal of this petition."

#. The petitioner has amended the petition by order of this Court dated 7th February, 1991 and this Court granted interim relief on 20th April, 1991, in other words, after allowing the amendment by this Court, two facts are very much clear that the order of punishment has been stayed by this Curt with further direction to the respondent to permit the petitioner to discharge his duties as PSI under the respondent No.3 and to draw his salary regularly pending admission, hearing and final disposal of this petition, meaning thereby, interim orders still remain continued in operation though the petitioner has retired from service on 31st March, 2001.

#. If the facts of the case are considered, it transpires that the allegation made against the petitioner by Yadi dated 26th February, 1986 while working as PSI at Ravpura Police Station, Baroda city. The main allegation is that the accused who was arrested and sent before Judicial Magistrate First Class, Baroda on 28th January, 1985 along with the written Yadi by the petitioner, at that occasion, in the written Yadi, the petitioner has not mentioned the fact that the accused is a citizen of Pakistan and convicted under Section 7 [3] and [14] of the Foreigners Act and the said accused was absconding from the police control. This fact was not mentioned by the petitioner in his written Yadi which was sent to the JMFC at Baroda.The reason given by the respondent authority that since this fact was not mentioned in the written Yadi, the JMFC concerned has released the accused on personal bond of Rs.500/- and thus, except that there is no other charge or allegations made against the petitioner. This was replied by the petitioner on 20th march, 1986 and he pointed out that as and when the accused has been arrested by the police authority and he was sent to the Magistrial custody, on that occasion, copy of the complaint under Section 154 of Cr.P.C. was always used to be sent early to the concerned Magistrate and in that all the details have been mentioned. Therefore, in complaint u/S.154, all such details were brought on record but it was not read by the concerned Magistrate and for that, he is not responsible because it was the order passed by the JMFC

releasing the accused on personal bond of Rs.500/-, for that, the petitioner was not negligent. Thereafter, departmental inquiry was initiated against him and ultimately, the petitioner was declared exonerated from the charge by the District Superintendent of Police, Kheda by order dated 29th February, 1988. Thus, the petitioner was fully exonerated with clear finding that no charge is established against the petitioner. Thereafter, again on 4th June, 1988, chargesheet came to be served on the petitioner while exercising the powers under Section 27-A of the the Bombay Police Act, 1951. Ultimately, the respondent Department has decided to review the order passed in favour of the petitioner. Therefore, the order of exoneration of the petitioner from the charges, has been set aside and again, fresh departmental inquiry was ordered by the concerned higher authority and accordingly, the order of holding preliminary inquiry as well as regular departmental inquiry passed against the petitioner. Thereafter, process has been carried out further by the respondent by order dated 30th September, 1989 and ultimately, by order dated 30th September, 1989 while exercising the powers under Section 27-A of the Bombay Police Act, show cause notice was served on the petitioner to the effect that why his services should not be terminated or he be not removed from service and thereby asked to submit explanation within ten days. The petitioner, in turn, has replied by submitting explanation dated 11/13th December, 1989. The petitioner has challenged the powers of review as well as the jurisdiction of the authority who has exercised the powers. It has come on record that after detailed reply given by the petitioner, punishment order dated 19th March, 1990 was passed against the petitioner reverting the petitioner by way of punishment from the post of PSI to First Grade Head Constable in maximum pay scale for a period of two years. Against the said order, departmental appeal was also preferred by the petitioner but the said appeal also came to be rejected by the State Government by order dated 15th September, 1990.

#. Learned advocate Mrs.Sangeeta Pahwa for the petitioner has raised an important question that Deputy Inspector General as set aside the order of exoneration of the petitioner dated 29th February, 1988 by order dated 4th June, 1988 and directed to hold de novo preliminary inquiry and regular departmental inquiry. She also submitted that this being the powers under Section 27-A of the Bombay Police Act, 1951 already exercised once by the Deputy Inspector General. Therefore, she submitted that after the order passed by

the Deputy Inspector General, no de novo preliminary inquiry was held and no regular departmental inquiry was held against the petitioner. On the contrary, the Inspector General has issued show cause notice dated 30th September, 1989 with clear observations made in para-4 that as per the directions issued by the Deputy Inspector General to hold de novo preliminary inquiry and do novo inquiry is not necessary and come to the conclusion that the order which has been passed by the Deputy Inspector General is also erroneous and there is sufficient material on record to prove the allegation against the petitioner which has been examined by him and come to the conclusion that charge levelled against the petitioner is found to be proved as the petitioner remained negligent and careless in performing his duties as PSI and he again exercised the powers under Section 27-A of the Bombay Police Act, 1951 and after exercising the said powers, issued show cause notice calling for explanation from the petitioner. That said explanation was given by the petitioner on 11th / 13th December, 1989, wherein this contention has been raised by the petitioner but the said contention has not been properly dealt with by the authority and without considering the said contention, that said powers of review can not be exercised by both two independent authorities in respect of the very order of punishment, meaning thereby, once the powers has been exercised under Section 27-A of the Act against the order, again powers under Section 27-A of the Bombay Police Act cannot be exercised and therefore, the order of review cannot be reviewed again by the higher authority. It is vehemently argued that this contention has been specifically raised by the petitioner in his reply submitted as explanation but the same has not been dealt with and examined by the authority concerned and ultimately, punishment order has been passed on 19th March, 1990 reverting the petitioner to the post of First Grade Head Constable in maximum pay salary which utlimately rectified by order dated 24th January, 1991 ordering reversion of the petitioner to the post of First Grade Head Constable for a period of two years.

#. Learned AGP Mr.Mangesh Mengade has supported that the order passed by the authorities and submitted that after all the petitioner who was the Police Officer had failed in discharging his duties properly and that is how accused who was citizen of Pakistan has got benefit of bail from the court of JMFC.

#. I have considered submissions made by the learned advocates for the parties and also perused the record of the case. The controversy involved in the present

petition, mainly, centers on the powers of the authority under Section 27-A of the Bombay Police Act, 1951 and therefore, the same is referred to as under :

"27. An appeal against any order passed against a Police Officer under section 25 or the rules or orders thereunder shall lie to the State Government itself or to such officer as the State Government may by general or special order specify. [Such appeal shall be filed within a period of sixty days from the date of the order appealed against.]

27-A The State Government, the Inspector General or a Deputy Inspector General may, suo motu or on an application made to him within the prescribed period in this behalf, call for and examine the record of any inquiry or proceeding of any subordinate police officer under this Chapter, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed by, and as to the regularity of the proceeding of such officer, any may, at any time, -

[a] confirm, modify or reverse any such order.

[b] impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by such order,

[c] direct that further inquiry may be held, or

[d] make such other order as, in the circumstances of the case, it or he may deem fit :

Provided that an order in revision imposing or enhancing penalty shall not be passed unless the police officer affected thereby has been given a reasonable opportunity of being heard :

Provided further that no order in revision shall be passed -

[i] in a case where an appeal against the decision or order passed in such inquiry or proceeding has been filed, when such

appeal is pending;

[ii] in a case where an appeal against such decision or order has not been filed, before the expiry of the period for filing such appeal; and

[iii] in any case after the expiry of a period of three years from the date of the decision or order sought to be revised.]

#. Thus, Section 27-A of the Bombay Police Act, 1951 confers powers on three authorities viz. the State Government, the Inspector General or a Deputy Inspector General. Therefore, this power can be exercised by any of the authorities. Looking to the facts of this case, the power has already been exercised by the Deputy Inspector General and the order again reviewed by the Inspector General under Section 27-A of the Act which is, in fact, not permissible under the Act, once the order of review has been passed by the authority. The order of review cannot be reviewed again while exercising the powers under Section 27-A of the Bombay Police Act. Therefore, according to my opinion, this being sufficient ground that punishment imposed by the Inspector General dated 19th March, 1990 rectified by order dated 24th January, 1991, deserves to be quashed and set aside as the Inspector General had no power and authority to set aside the order of Deputy Inspector General and therefore, the order passed by the Inspector General dated 19th March, 1990 which is amended vide order dated 24th January, 1991 is hereby quashed and set aside.

#. Now the question arises that the original order which has been reviewed by the Deputy Inspector General dated 4th June, 1988 whereby the order of exoneration of the petitioner has been set aside and de novo preliminary inquiry and de novo departmental inquiry has been ordered would come into force and existence. Therefore, the question is, whether it is permissible now at this stage to hold de novo preliminary inquiry and de novo regular departmental inquiry against the petitioner. This Court has considered all these aspects in its totality in light of the subsequent developments during pendency of the petition. Initially, when the petition has been filed, reversion order has been stayed and the stay granted by this Court is still continued till date, meaning thereby, it remained in operation for more than thirteen years. It also requires to be appreciated that during operation of the interim relief in favour of the petitioner, the

petitioner has retired from service on 31.3.2001. Therefore, after this much lapse period and / or passage of time and when the petitioner has already retired from service on 31.3.2001 and thereafter also, period of two years have elapsed and therefore, considering all these aspects and the mental agony after retirement of the petitioner, now to pursue and implement the order passed by the Deputy Inspector General dated 4th June, 1988 would be unnecessary in the facts and circumstances of the case without any reason and on the contrary, it will cause unnecessary hardships and further mental agony to the petitioner who is a retired employee for more than two years. Without going into merits of the matter, apparently there was no serious charge of dishonesty, misappropriation and / or fraud against the petitioner. It was merely charge of lack of some supervision or negligence which is considered to be serious by the Department and punishment was imposed. But when the punishment order itself is without jurisdiction and contrary to the provisions of Section 27-A of the Bombay Police Act, 1951 and therefore, now to hold further de novo preliminary inquiry and regular departmental inquiry would be nothing but merely a harassment and to create mental tension in the mind of the retired employee. Therefore, according to my opinion, this chapter requires to be closed down here and no further de novo preliminary inquiry and de novo regular departmental inquiry requires to be continued against the petitioner.

##. One important aspect which requires to be noted which occurred in the facts of this case that on 19th January, 2001, this Court has passed the following order.

"Learned counsel for the petitioner prays for time to file translation of Gujarati. Prayer made is granted.

S.O. to 2.2.2001

If in the meanwhile the petitioner retires from the services then his pension and all retiral benefits are to be fixed by the respondents on the post to which he was reverted but not on the post of which he is continuing under the interim order."

##. I fail to understand the exigency and contingency to pass the aforesaid order. The original punishment order dated 19th March, 1990 is limited for the period of two years. There is no further punishment awarded by the competent authority. The petitioner who retired on

31.3.2001. Naturally, after two years from 19th March, 1990, 19th March, 1992 the petitioner would have been promoted to the post of PSI as his punishment would be over and then he was working as PSI and therefore, where is the question to fix the pension and other retirement benefits in the post of First Grade Head Constable which is admittedly the lower post. Therefore, no question would have been arisen at all but because of order of this Court, the pension and all retiral benefits have been fixed on the basis of the lower post. The attention of this Court is also drawn to the fact that initially the pension and retirement benefits were fixed for the post of PSI but subsequently, pursuant to the order of this Court dated 19th January, 2001, the pension and retiral benefits have been calculated on the basis of reversion post of First Grade Head Constable by order dated 12th March, 2001. Learned advocate Mrs.Sangeeta Pahwa submitted that this being difficulty arose on account of the order passed by this Court on 19th January, 2001 and the petitioner is now suffering not receiving the proper retirement benefits from the respondent and the petitioner has been receiving the benefits in the post of First Grade Head Constable and not on the basis of the post of PSI. She also submitted that order of reversion was only for two years and after a period of two years, the petitioner had worked for more than nine years on the post of PSI even though the petitioner has not been receiving the retirement benefits including the pension in the post of PSI.

##. In view of this conflict and the order passed by this Court on 19th January, 2001 which has given cause to difficulty and adverse situation for the petitioner, according to my opinion, some suitable directions require to be issued to do the justice in the facts and circumstances of the case to enable the petitioner to get proper retirement benefits in the post of PSI from the respondent Department.

##. In view of above discussion, present petition succeeds and the same is allowed. As a consequence thereof, the order passed by the respondent authority dated 19th March, 1990, 15th September, 1990 and 24th January, 1991 are hereby quashed and set aside with direction to the respondents not to hold de novo preliminary inquiry and de novo regular departmental inquiry as per the order passed dated 4th June, 1988 passed by the Deputy Inspector General. Therefore, the respondents Department are directed to recalculate all the retirement benefits including the pension of the petitioner on the basis of the fact that the order of

punishment is set aside by this Court and now no further inquiry is to be held against the petitioner as directed by this Court and after calculating all the benefits on the basis of the post of PSI and shall make necessary payments of such benefits to the petitioner after adjustment of the earlier payments made by the Department to the petitioner against the retirement benefits including pension. The difference of the amount which is available to the petitioner in view of the above directions, shall be paid to the petitioner within two months from the date of receiving the copy of this order.

Rule is made absolute to the extent indicated above with no order as to costs.

Direct Service permitted.

Date : 1.12.2003 [H.K.Rathod, J.]

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